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Ralph Merrill dba Quinn's Junction Parternship v. Park City : Reply Brief

Utah Court of Appeals

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THE UTAH COURT OF APPEALS

RALPH MERRILL d/b/a QUINN'S JUNCTION PARTNERSHIP, Appellant/Plaintiff, vs. PARK CITY, a body politic and political subdivision of the State of Utah, and JOHN DOES 1-50, Appellees/Defendants.	Appeal No. 20080452-CA

REPLY BRIEF OF APPELLANT, RALPH MERRILL d/b/a QUINN'S JUNCTION PARTNERSHIP

ON APPEAL FROM A FINAL JUDGMENT OF DISMISSAL OF THE THIRD JUDICIAL DISTRICT COURT FOR SUMMIT COUNTY, CASE NO. 050500205, HONORABLE BRUCE LUBECK, DISTRICT JUDGE

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INTRODUCTION

Pursuant to its agreements with Summit County and based upon its annexation declaration zone, Appellee Park City ("Park City") exercised control over Appellant Ralph Merrill d/b/a Quinn's Junction Partnership's ("QJP") property (the "QJP Property"), through its annexation power and otherwise, in a manner designed to preclude any economically viable development on that property. Park City took those actions so that the QJP property could be obtained or maintained as open space without payment of just compensation. Those facts are established in the allegations of the Second Amended Complaint ("Complaint") in which QJP has asserted the facts supporting its claims through specific and detailed allegations of fact supported by documentation.

Focusing narrowly on the vote on the QJP annexation petition, Park City first argues that QJP's allegations show no arbitrary, capricious, or illegal act by Park City in violation of QJP's legal rights and that the acts of Park City before and after that vote are irrelevant to the judicial review of that annexation decision. Second, Park City argues, again focusing very narrowly to try to avoid the implications of its conduct, that the denial of QJP's annexation petition cannot form the basis of a takings claim because QJP has no protectable interest in the grant of its annexation petition and because Park City's decision cannot be found to constitute regulatory control over the QJP Property. Park City's arguments are without merit. The facts set forth in the Complaint establish: (a) arbitrary, capricious, or illegal acts by Park City, namely the abuse of QJP's constitutional rights; and (b) that PC is exercising regulatory control over the QJP

Property to prevent QJP from obtaining approval for any economically viable use for the QJP property.

The detailed and well-supported factual allegations of the Complaint credibly establish Park City's specific intent to use its annexation power, the interlocal agreement and other agreements with Summit County to prohibit development either to force QJP to sell its property at an extortionate price or to maintain the property as open space without paying just compensation. The facts set forth in the Complaint, which must be accepted as true for purposes of this Court's review, establish that Park City abused its power of annexation, intending to deprive QJP of any ability to obtain approval for an economically viable use for its property and in violation of the constitutional prohibition against taking private property without just compensation.

ARGUMENT

I. The Complaint Establishes Park City's Arbitrary, Capricious, and Illegal Acts Violating the Constitutional Prohibition on Taking Private Property Without Just Compensation.

Park City argues that QJP's Complaint offers nothing but "vague accusations" which fail to show how Park City's actions are arbitrary, capricious, or in violation of QJP's specific legal rights. Brief of Appellee, p. 3. As is set forth in the Appellant's Statement of Facts, however, QJP has alleged and supported facts establishing that Park City:

(a) Intended to preserve the QJP Property as open space (See Appellant's Statement of Facts and Citation to the Record ("SOF"), ¶¶ 23, 30-31, 37-38, 68-69);

(b) Used its interlocal agreement with Summit County to ensure that no development would occur without its consent through annexation (SOF ¶¶ 12-17, 24, 73);

(c) Imposed various land studies and moratoria for the purpose of delaying development (SOF ¶¶ 29, 32-33);

(d) Undermined area landowner's ability to build a consensus, a requisite for the master planning process, by selectively purchasing certain properties for open space (SOF ¶¶ 26-28);

(e) Made multiple efforts to purchase the property as open space following various successful efforts to impose further development delays (SOF ¶¶ 31, 66);

(f) Fired its own land-use expert following the issuance of a report that was contrary to Park City's agenda (SOF ¶¶ 34-42); and

(g) Offered false and artificial reasons for the denial of QJP's annexation petition which were inconsistent with its favorable treatment of similar petitions for adjacent properties (SOF ¶¶ 45-65).

The annexation decision by Park City, as established by the facts in this case, was part of a pattern of arbitrary, unjust, and illegal conduct designed to take QJP's property without just compensation. Under the standard of review applicable to a motion under Utah Rule of Civil Procedure 12(b)(6), QJP has provided sufficient factual allegations to establish that Park City's actions were "capricious or arbitrary [and] tainted by malice, fraud, corruption, or gross abuse of discretion." McQuillan Mun. Corp. §7.41 (2007) (providing for judicial review of annexation decisions under such circumstances).

Utah Courts have plainly and uniformly stated that they will intervene to review actions by a municipality, including an annexation decision, where the challenged action appears "so wholly unreasonable and unjust that [it] must be deemed capricious and arbitrary in adversely affecting someone's rights." Child v. Spanish Fork, 538 P.2d 184, 186 (Utah 1975); see also Bradshaw v. Beaver City, 493 P.2d 643, 645 (Utah 1972) (affirming that judicial intervention is proper where municipal decision "is so lacking in propriety and reason that it must be deemed capricious or arbitrary"). QJP has certainly alleged facts sufficient to support judicial review of Park City's actions in this case.

In making its argument on appeal, Park City is forced to ignore the detailed factual history set forth in the Complaint and to focus solely on the exact instant in which the Park City Council voted against QJP's annexation petition. Brief of Appellee, pp. 4-5. Park City's myopic focus is improper. First, the judiciary's role in preventing the type of abuse alleged in this case is well-established. Park City's argument would virtually eliminate a petitioner's ability to establish through evidence outside of the formal vote that a municipality abused its power in connection with an annexation decision. The annexation decision in this case was just one of many acts by Park City intended to prohibit any economically viable use for the QJP Property and that history must be considered in determining whether Park City's actions were "capricious or arbitrary [and] tainted by malice, fraud, corruption, or gross abuse of discretion." McQuillan Mun. Corp. §7.41 (2007). To adopt Park City's myopic view this Court would have to ignore reality and concede that the actions of municipalities are essentially immune from judicial review. That is not the law.

Second, Park City's argument simply ignores QJP's factual allegations establishing that the reasons cited by Park City to justify its denial of the QJP annexation petition are pretextual and false. For example, it is established that Park City treated similar adjacent properties differently, approving the annexation of those similar properties even though their petitions were no different than QJP's.[1] (SOF ¶¶ 45-65).

Unlike the case of Bradshaw v. Beaver City, 493 P.2d 643 (Utah 1972), which was ultimately dismissed because plaintiffs stated their contentions as "conclusions of law," QJP has described numerous, specific, arbitrary, capricious, and illegal acts by Park City in support of its claims, supporting many of those facts with attached documentation. QJP has established that Park City's annexation decision was unjust, unreasonable, and tainted by an abuse of power, and that the effect of Park City's annexation decision was to deprive QJP of any opportunity to obtain an economically viable use for the QJP Property. The allegations of the Complaint are sufficient to survive a motion to dismiss.

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[1] Park City's claim that the facts as alleged are irrelevant because they "were not part of the record before the City Council" is without merit and is not properly at issue in this appeal. Brief of Appellee, pp. 3-4. In addition, the statute cited in support of Park City's argument states that "if there is a record, the district court's review is limited to the record provided by the land use authority or appeal authority, as the case may be." U.C.A. § 10-9a-801(8). Park City made no such argument before the trial court, nor has it identified the details of any record "provided by the land use authority," and thus the argument is not appropriately at issue in this appeal.

II. Under the Circumstances as Alleged, Park City's Abuse of its Annexation Power Constitutes Regulatory Control Eliminating Any Economically Viable Use for the QJP Property.

A. Park City Is Exercising Regulatory Control over the QJP Property.

Park City's claim that its denial of QJP's annexation petition does not constitute a "regulation" sufficient to support a regulatory taking again reflects its myopic focus on the moment of the vote on the QJP annexation petition and disregard of the factual history relating to that vote set forth in the Complaint. Park City, and the trial court, are both in error when they state that the "Park City Council's [annexation] decision places no restriction on [QJP's] use of his property." Brief of Appellee, p. 8. Park City's actions under its agreements with Summit County, which cede developmental control over the QJP property to Park City, constitute regulation of that property. See Statement of Fact at ¶14.

In the formal Interlocal Agreement, Summit County "authorize[d] and formalize[d] Park City's participation in land use planning, development, approvals, and the provision of urban services in unincorporated portions of Summit County and/or in proximity to the City limits." (SOF ¶¶ 12-13). The Interlocal Agreement provided that any development at Quinn's Junction, including the QJP Property, must be compatible with Park City's standards and requirements, which are not part of Summit County's land use code. (SOF ¶ 14). The effect of the Interlocal Agreement, as well as other unwritten agreements between Park City and Summit County, is to force QJP to obtain annexation into Park City and development approval from Park City before the QJP Property can be

put to any economically viable use. (SOF ¶ 15). Even though the formal Interlocal Agreement has expired by its terms, Park City is still exercising control over the QJP Property by requiring annexation and approval for any development to occur. (SOF ¶ 17).

Park City attempts to distinguish the similar case of Creekside Associates v. City of Wood Dale, 684 F. Supp. 201 (N.D. Ill. 1988) on the grounds that in Wood Dale, "development in unincorporated land surrounding the City of Wood Dale was prohibited by Wood Dale municipal code until such land was incorporated into the City." Brief of Appellee, p. 9. But that is precisely the same situation here – because it is within Park City's annexation declaration zone and pursuant to the interlocal agreement and other agreements with Summit County, development of unincorporated land (Quinn's Junction) adjacent to Park City is prohibited by Park City until such land is annexed into the City and the development is approved by the City. Both cases involve a municipality's exercise of regulatory power over property beyond its official borders through its power of expansion. Because Park City has the authority to regulate the QJP property and has done so arbitrarily and unjustly, including the exercise of its annexation power, QJP has sufficiently alleged that Park City's actions constitutes a regulation of the QJP Property.

B. QJP Has a Protectable Interest in Putting its Property to an Economically Viable Use, the Exercise of Which Park City has Deliberately Prevented Through its Actions.

Park City argues that QJP has no protectable property interest in a favorable annexation decision. The facts in this case, however, make it clear that no development,

or any economically viable use, will be approved for the QJP Property without Park City's approval and annexation. Because of Park City's actions to preclude any economically viable use for the QJP Property, including its refusal to annex the QJP Property, in order to obtain the property as open space either without payment or at an extortionate price, QJP has a protectable property interest in the annexation decision Park City wrongfully denied.

QJP's claims do not run afoul of the Penn Central analysis, quoted in Park City's Brief, which states that a claimant cannot establish a taking "simply by showing that they have been denied the ability to exploit a property interest that [it] heretofore had believed was available for development." Penn Central Transp. Co. v. New York City, 438 U.S. 104, 130 (1978). In Penn Central, the single property interest alleged to constitute the taking was the right to build an office tower in the plaintiff's "superjacent airspace." Id. QJP's allegations do not attempt to establish that QJP has been denied any **one** aspect of its property rights, or "one of the sticks in the bundle of rights associated with his property," but instead that Park City's abusive exercise of its annexation power and regulatory control over the QJP Property has deprived QJP of **all** of the sticks in the bundle. Brief of Appellee, p. 7.

Similarly, Park City cites Morgan v. City of Harlem, 775 P.2d 686 (Mont. 1989) for the proposition that no property interests can be created or destroyed pursuant to the denial of a municipal annexation petition. But in Morgan, the taking claim was based on the City's refusal to issue a single water and sewer permit for an eight-unit apartment building the plaintiff was planning, instead requiring that plaintiff obtain eight separate

permits. Id. at 688. There was no claim in Morgan that the City's refusal to issue the single requested permit deprived the plaintiff of all economically viable uses for the property. In fact, it is apparent that there was no deprivation of any property right in Morgan because the eight separate permits were ultimately issued by the City, giving the plaintiff every right he sought. Id.

"A regulatory taking transpires when some significant restriction is placed upon an owner's use of his property for which 'justice and fairness' require that compensation be given." View Condo Owners Assoc. v. MSICO, LLC, 2005 UT 91 ¶ 31. In this case, Park City's regulation of the QJP property both materially lessens its value and interferes with Plaintiff's right to use the property in an economically viable manner. Because those facts are admitted for purposes of this appeal, QJP has stated a claim for inverse condemnation upon which relief may be granted.

CONCLUSION

For the foregoing reasons, this Court should reverse the trial court's order dismissing this case.

DATED this 30th day of January, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that I caused two (2) true and correct copies of the within and foregoing **REPLY BRIEF OF APPELLANT**, to be hand-delivered, this 30th day of January, 2009, to the following:

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